



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Review of Rules that do not Expire under IC 13-14-9.5-1.1

LSA Document #12-262

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Description

The Sunset Statute, IC 13-14-9.5, requiring readoption of administrative rules on a seven year basis, was amended in 2001 with the addition of IC 13-14-9.5-1.1 specifying that certain rules do not expire but do require a notice of review to be posted in the Indiana Register for a 30 day comment period with a hearing to be conducted by the appropriate board as to the possibility of initiating rulemaking.

Citations Affected

327 IAC 2-1-12, Incorporation by reference;

327 IAC 2-1.5-16, Site-specific modifications to Tier I criteria and Tier II values;

327 IAC 2-1.5-20, Incorporation by reference; and

327 IAC 8-2.6-6, Filter backwash.

Affected Persons

These rules are required by the Clean Water Act and Safe Drinking Water Act in order for Indiana to maintain its delegations for the National Pollutant Discharge Elimination System (NPDES) and the drinking water programs. Therefore, Indiana and the dischargers and permit holders under the NPDES and SDWA programs are affected.

Reason(s) for the Rule

IC 13-14-9.5-1.1 describes types of rules that do not expire after seven years. These types of rules are: (1) rules required to receive or maintain delegation, primacy, or approval for implementation or operation of a program established under federal law; and (2) rules required to begin or continue receiving federal funding for implementation or operation of a program.

The Indiana Department of Environmental Management (IDEM) is required to publish a list of these rules that have been effective for seven years and request comment, in a 30 day comment period, on any specific rule that should be reviewed through the regular rulemaking process under IC 13-14-9. IDEM must also provide notice of a public hearing before the Water Pollution Control Board (board) concerning this IC 13-14-9.5-1.1 rule review. IDEM must respond to all comments received during the comment period and provide the comments and responses to the board during the public hearing. The board, after considering the comments, responses, and testimony at the hearing, will direct IDEM on whether additional rulemaking actions must be started to address concerns raised to the board.

Economic Impact of the Rule



There are no new costs to the state or regulated entities as a result of the review of existing rules.

Benefits of the Rule

The original Sunset Statute established the category of rules that do not expire and made those rules exempt from the Sunset requirements. The 2001 amendment to the Sunset Statute maintained the exemption for rules that do not expire but added the benefit for a review requirement and opportunity for the board to direct IDEM to initiate rulemaking.

Description of the Rulemaking Project

The notice of rule review was posted in the Indiana Register on May 23, 2012, and can be found under DIN: 20120523-IR-327120262BNA along with the posted notice of public hearing found under DIN: 20120523-IR-327120262PHA with changes made to the hearing date and posted under DIN: 20120530-IR-327120262CHA and DIN: 20120613-IR-327120262CHA. The 30 day comment period ended on June 22, 2012, without the receipt of any comments.

Public Notices

Notice of Rule Review: May 23, 2012, Indiana Register (DIN: 20120523-IR-327120262BNA).

Notice of Public Hearing: May 23, 2012, Indiana Register (DIN: 20120523-IR-327120262PHA).

Change in Notice of Public Hearing: May 30, 2012, Indiana Register (DIN: 20120530-IR-327120262CHA).

Change in Notice of Public Hearing: June 13, 2012, Indiana Register (DIN: 20120613-IR-327120262CHA).

Scheduled Hearings

First Public Hearing: July 25, 2012.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The IC 13-14-9.5 is a state statute. The exempted category of rules that do not expire and are not held to the requirements of IC 13-14-9.5 includes all the rules administered by IDEM that are required in order for the state to be approved to implement or operate a program established under federal law.

Rulemaking Process

The first step in the rulemaking process under IC 13-14-9.5-1.1 is the Notice of Rule Review posted in the Indiana Register with a 30 day public comment period and the scheduling of a public hearing before the Water Pollution Control Board. At the public hearing before the board, the board has the opportunity to:

- (1) consider the comments received during the noticed comment period (no comments were received);
- (2) consider IDEM's responses to the comments (none);
- (3) consider testimony if provided by the public; and
- (3) direct IDEM to initiate rulemaking under IC 13-14-9 on specific rules if the board believes rulemaking is warranted.

Additional Information

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).